

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 359 of 2000

with
Civil Application No. 8725 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIRABEN KESHABHAI

Versus

BHARGAV DAMJI VAKARIYA - MINORTHRO'NATURAL GUARDIAN

Appearance:

MR PR NANAVATI for Petitioner

MR SM SHAH for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 15/11/2000

ORAL JUDGEMENT

1. A Special Civil Suit No. 139 of 2000 came to be
filed by the present appellant before the Civil Judge
(SD) at Rajkot, in which Application - Exh.5 for interim
relief was preferred, which was rejected by learned Third

Joint Civil Judge (SD), Rajkot, vide his order dated 14th September, 2000. Being aggrieved by the said order, this Appeal From Order is preferred by the plaintiff.

2. Learned Trial Judge did not grant the interim order to the plaintiff because the Trial Judge concluded that the suit itself was not maintainable and was barred by O.7 R.11 sub-rule (a) and (o) of the Civil Procedure Code.

3. Therefore, at this juncture, the crucial question which arises to be determined is whether before this Court this Appeal From Order is maintainable and competent. The dispute in the present case is squarely covered by a decision of this Court in the matter of FILOMA PATHUBHAI PATEL vs. AMBALAL D. BHAGAT, reported in 1987 (1) GLH (UJ) 18. The principle which laid down was, in a suit, valuation for the purpose of court fees would automatically govern the valuation for the purpose of jurisdiction. The suit in this case is filed for the declaration of the ownership of the plaintiff in respect to the agricultural lands, which has been purchased from defendant No.1. This being an agricultural land, considering the yearly assessment to Rs.25.00, the same multiplied with 20 multipliers for the court fees. The suit is valued at Rs. 260.50ps but for the jurisdiction having regard to the market value of the land, the suit is valued at Rs.1,87,915 and the suit was preferred on a court fees of Rs. 30.00

4. Now, according to the principle laid down in the matter of Filoma Pathubhai Patel (supra) the valuation for the purpose of the court fees will be the valuation of the suit for the purpose of jurisdiction also.

Therefore, for the purpose of jurisdiction, the suit is required to be valued at Rs.260.50ps and against the order under O.39 R.1 and 2 by any court in such suit, Appeal before District Court would be competent in pursuance of Sec. 26 of the Bombay Civil Court Act and Appeal From Order before this Court would be incompetent.

5. In this view of the matter, learned Advocate Mr. P.R. Nanavati for the appellant seeks permission to withdraw this Appeal with liberty to file an Appeal before the appropriate District Court.

6. Permission to withdraw this Appeal From Order is granted. Appellant will be at liberty to file a Regular

Appeal before the appropriate District Court.

7. In this view of the matter, this Appeal From Order stands dismissed as withdrawn. Notice is discharged. No order as to costs. The interim relief granted in the Civil Application in favour of the appellant shall stand extended till 27th November, 2000 and the parties are directed to maintain status quo as to suit property till then.

8. In view of the order passed in the main matter, no order on Civil Application No. 8725 of 2000 and same shall stand disposed of accordingly. Notice is discharged.

(J.R. Vora, J.)

p.n.nair